



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

URGENT LEGAL MATTER - PROMPT ATTENTION REQUIRED
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 8, 2013

Mr. Omer Choquette
Omer Choquette Excavating
224 Missionary Acres
Newport, VT 05855-5898

Re: Request for Information Pursuant to Section 308 of the Clean Water Act

Dear Mr. Choquette:

This letter concerns clearing and stumping of wetlands, including forested wetlands and the associated discharge and re-deposition of soil, rocks, sand and/or other dredged or fill material into such wetlands located on property owned by Nelson Farms, Inc. located off both the north and south sides Coventry Station Road, Coventry, Vermont (the "Site"). Recently, representatives of the U.S. Environmental Protection Agency ("EPA") inspected the site, and found that a large area of forested wetlands had been cleared and stumped, and that a long north-south directional ditch had been excavated through the Site on the north side of Coventry Station Road. The work that occurred was apparently performed for the expansion/creation of farmland. Based on EPA's information it appears that these discharges were a result of work performed by you or your business, Omer Choquette Excavating. By this letter, EPA seeks information concerning your involvement in activities that resulted in the discharge or re-deposit of material that impacted wetlands at the Site.

Under the provisions of the federal Clean Water Act (the "Act"), 33 U.S.C. § 1251 *et seq.*, the discharge of pollutants, including soil, sand, rocks and/or other dredged or fill material, and the re-deposition of dredged material during excavation and land clearing activities, into waters of the United States is unlawful except as authorized by, among other things, a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344. A federal permit is required under Section 404 of the Act, for those activities which result in the discharge of dredged or fill material into waters of the United States, including most wetlands. Under the Clean Water Act, persons who perform the work constituting a discharge into wetlands and other waters may be responsible for ensuring that a federal permit is obtained, in addition to the owner of the Site.

The U.S. Army Corps of Engineers (the "Corps") is responsible for accepting applications for and issuing or denying permits to perform such work, while the EPA reviews and comments to the Corps on the permit applications received. Both agencies share enforcement responsibilities under the Act, which provides administrative and judicial penalties for violations.

A review of the Corps records shows that neither you, your company, Nelson Farms, Inc. or any other entity obtained a federal permit authorizing the activities which occurred in wetlands at the Site. Since a federal permit was not issued for this work, you should not perform any additional work in wetland areas at the Site.

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Section 308(a) of the Act, 33 U.S.C. §1318(a), provides the EPA with the authority to require the disclosure of information necessary to determine whether any person has violated any provisions of the Act. Accordingly, you are hereby requested pursuant to Section 308(a) to furnish the information identified below within 21 days of receipt of this letter:

1. Did you or Omer Choquette Excavating conduct work at the Site, including work in wetlands, or did you or Omer Choquette Excavating direct or control work at the Site, including work in wetlands? If so, explain in detail why this work, which resulted in the re-deposit or discharge of dredged or fill material into wetlands, occurred without the required Corps permit, and who was responsible for obtaining the Corps permit for the Site;
2. Were the wetlands on site professionally delineated? If so, please provide copies of such delineations and any supporting documentation. If you are not in possession of such delineations please indicate the names, addresses and telephone numbers of the parties who you believe may be, have been, or are in possession of such documents;
3. Provide all reports, evaluations and/or site plans that relate to the Site, including soil reports, engineering, construction, and survey reports prepared by any person at any time. If you are not in possession of reports listed above please indicate the names, addresses and telephone numbers of the parties who you believe may be, have been or are in possession of such documents;
4. State the specific dates during which clearing, grubbing and excavation occurred which resulted in the discharge of dredged and/or fill material at the Site. Also provide a precise description of the activities (i.e., clearing, stumping/grubbing, excavating, stockpiling, filling, etc.) which resulted in re-deposit or placement of dredged or fill material, including filling of wetlands;
5. State, in square feet or acres, the area of wetlands impacted as a result of dredging, which includes grubbing. Also indicate whether any dredged or fill material was brought onto the Site from another location, and the volume of such material;
6. Provide copies of all contracts, invoices or forms of proof of payment you have relevant to work at the Site. If no contracts or related paperwork exist, describe in detail your business arrangement with Mr. Doug Nelson, Sr., or other representatives of Nelson Farm, Inc. relative to the work at the Site;
7. Identify the types of equipment used and its purpose during the work that occurred within the wetland. State the names and addresses of the owners and operators of the equipment for all construction activities, including dredging and filling, which occurred at the Site;
8. Provide copies of all correspondence, including but not limited to any permits or applications for permits, with any local, state or federal government agency pertaining to the placement, retention, or removal of dredged and/or fill material, or to any other work occurring in wetlands at the Site;
9. If you had any verbal communications with any local, state, or federal government agency, pertaining to the placement, retention, or removal of dredged and/or fill material, or to any other work occurring in wetlands at the Site, please describe them, identifying all persons involved, the date of such communications, and the substance of the communications.

10. Have you or Omer Choquette Excavating ever sought a Corps of Engineers permit for past projects involving work in wetlands or watercourses? Please provide information indicating the name and location of the property, the date of the application or transaction, the type of activity, and a copy of the permit or any documents relative to your communications with the Corps;

11. Was an inventory of the tree species taken either before or after they were cut at the Site? If so, please provide such inventory. If not, please list the dominant trees that were cut from the Site.

12. Was timber or stumpage from the clearing, grubbing and/or excavating of the Site sold? If so, state the dollar value paid for the timber or stumpage, and identify the buyer and seller.

Please be advised that you may assert a business confidentiality claim with respect to part or all of the information submitted to EPA in the manner described at 40 C.F.R. Section 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means, of the procedures set forth in 40 C.F.R. 2, Subpart B. Pursuant to 40 C.F.R. §2.302(h), information disclosed in your response may be shared with EPA's authorized representatives, SAIC, 8301 Greensboro Drive, McLean, VA 22101 and Wheeler Environmental Services, LLC, 437 Hoots Place, Corinth, VT 05039. If no claim of business confidentiality accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to you. Please be aware that state laws governing confidential business information may differ.

If you have a consultant, attorney, or other agent respond to this inquiry on your behalf, please include a certification stating that such agent has the authority to respond for you or sign and return the form provided. This certification must include your signature.

If you have any questions concerning the required information, please contact Denise Leonard of my staff at (617) 918-1719. You should be aware that failure to respond to this information request may subject you to administrative and judicial enforcement action pursuant to section 309 of the Act, 33 U.S.C. § 1319, including, among other things, imposition of administrative penalties up to \$177,500.

Please address your response, sent by certified mail, to: Mr. Sam Silverman, Deputy Director, Office of Environmental Stewardship, (Attn: Denise Leonard, SEE), EPA New England, Region 1, 5 Post Office Square- Suite 100, Mail Code: OES-05-01, Boston, MA 02109-3912.

Sincerely,



Sam Silverman, Deputy Director
Office of Environmental Stewardship

Attachments: Small business information sheet
Business confidentiality information
Declaration – Agent Certification Form

See attached list for copies furnished:

Copies furnished w/o attachments:

Marty Abair, U.S. Army Corps of Engineers, VT Project Office, 8 Carmichael Street,
Suite 205, Essex, VT 05452
Alan Quackenbush, 1 National Life Drive - Main 2, Montpelier, VT 05620-3520